

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SUNYA G. CARTER,

4:15CV3082

)

Plaintiff,

)

v.

)

ELROY LEE BROWN,

)

Defendant.

)

**MEMORANDUM
AND ORDER**

This matter is before the court on a preliminary review of Plaintiff Sunya Carter's Complaint (Filing No. [1](#)). Carter sues Defendant Elroy Lee Brown based on a theory of “[t]heft by deception related to fraudulent misuse of federal death benefits.” (Filing No. [1 at CM/ECF p. 4](#).) Carter alleges Brown misused “Social Security death benefits” in the amount of \$6,570, which were designated for the care of Brown’s biological child. Carter, who is currently the child’s guardian, seeks to recoup these misused benefits from Brown. (Filing No. [1 at CM/ECF pp. 2-3](#).) For the reasons explained below, this court lacks subject-matter jurisdiction over this action. Accordingly, the court will dismiss this case without prejudice to reassertion in a state district court.

Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, [511 U.S. 375, 377 \(1994\)](#). The subject-matter jurisdiction of the federal district courts is generally set forth in [28 U.S.C. §§ 1331](#) and [1332](#). Under these statutes, federal jurisdiction is available only when a “federal question” is presented (i.e., in a civil action arising under the Constitution, laws, or treaties of the United States) or when the parties are of diverse citizenship and the amount in controversy exceeds \$75,000.

Here, Carter seeks to recover money allegedly owed to her by Brown based on a theory of “fraud.” Carter and Brown are both citizens of Nebraska and the amount

in controversy is \$6,570. Therefore, the citizens are not diverse and the amount in controversy does not exceed \$75,000. In addition, there is no discernible “federal question” based on the facts alleged in the Complaint. Accordingly, this court must dismiss this case because it has determined that it lacks subject-matter jurisdiction over it. *See Fed. R. Civ. P. 12(h)(3)* (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”) To the extent Carter intends to assert some sort of state fraud or conversion action against Brown, she must do so in a state district court.

IT IS THEREFORE ORDERED that: The court lacks subject-matter jurisdiction over this action and the case is dismissed without prejudice to reassertion in state court. The court will enter judgment by a separate document.

DATED this 20th day of November, 2015.

BY THE COURT:

s/ John M. Gerrard
United States District Judge

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